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Stoddard v. Hagadone Corp. Appellant's Brief 1 Dckt. 34335

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STODDARD V. THE HAGADONE CORP. PROCEEDINGS TAKEN 3-14-01

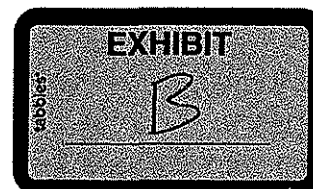
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(1) BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO
 (2)
 (3) ROBERT J. STODDARD,)
 (4) Claimant,) I.C. No. 96-018310
) 97-036904
) 99-016897
 (5) VS.)
 (6) THE HAGADONE CORPORATION,)
 (7) Employer,)
 (8) and)
 (9) GENERAL INSURANCE COMPANY)
 OF AMERICA,)
 (10) Surety,)
 (11) and)
 (12) ROYAL INDEMNITY COMPANY,)
 (13) Surety,)
 (14) Defendants.)
 (15)
 (16) TRANSCRIPT OF HEARING
 (17) AT COEUR D'ALENE, IDAHO
 (18) MARCH 14, 2001
 (19)
 (20) HEARING OFFICER: REFEREE MICHAEL E. POWERS
 (21)
 (22) REPORTED BY:
 (23) PATRICIA L. PULLO, CSR, RPR
 (24) Notary Public
 (25)

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APPEARANCES

(1)
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 appearing for and on behalf of the Claimant;
 (4)
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 (8)
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 (10) Boise, Idaho 83701, appearing for and on behalf of the
 Defendants The Hagadone Corporation and Royal Indemnity
 (11) Company.
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(1) PROCEEDINGS

(2) TAKEN MARCH 14, 2001, AT 9:30 A.M.

(3) REFEREE POWERS: Let's then go on the record

(4) in the matter of Robert Stoddard, the claimant, versus

(5) Hagadone Corporation, the employer. And we have two

(6) sureties in this matter, the first being General

(7) Insurance - at least the first listed is General

(8) Insurance Company of America and Royal Indemnity

(9) Company.

(10) And we'll note for the record that

(11) Mr. Stoddard is present this morning. And as I

(12) indicated to you off the record, my name is Mike

(13) Powers. I have been assigned by the Industrial

(14) Commission to hear your case. And I will further note

(15) that you are present with your attorney, Mr. John

(16) Mitchell, from Coeur d'Alene. And Mr. Bentley

(17) Stromberg from Lewiston represents General Insurance

(18) Company?

(19) MR. STROMBERG: That's correct.

(20) REFEREE POWERS: And Ms. Glenna Christensen

(21) from Boise represents Royal Indemnity Company; is that

(22) correct?

(23) MS. CHRISTENSEN: That's correct.

(24) REFEREE POWERS: We are here today regarding

(25) three - is it three accidents?

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(1) MR. MITCHELL: Correct, your Honor.

(2) REFEREE POWERS: Okay. And perhaps to assist

(3) me as we go along, can you identify for me,

(4) Mr. Stromberg, the accidents that General was involved

(5) with.

(6) MR. STROMBERG: Yes. The 5/5/96 hernia, the

(7) 10/10/97 low back injury.

(8) REFEREE POWERS: Thank you. So Royal has

(9) the ...

(10) MS. CHRISTENSEN: 5/11/99 back.

(11) REFEREE POWERS: Thank you. And the

(12) issues - are there different issues for different

(13) accidents or are the issues pretty much the same for

(14) each?

(15) MR. MITCHELL: I believe they're virtually

(16) identical for all three.

(17) MS. CHRISTENSEN: Yes.

(18) MR. STROMBERG: I think so.

(19) REFEREE POWERS: And the issues at least as

(20) we have listed here in the Notice of Hearing, and

(21) correct me if I'm wrong - or maybe you can just state

(22) what the issues are. It might be easier.

(23) MR. MITCHELL: I don't think there's any

(24) issue of any claim for attorneys fees on the first two

(25) accidents, the ones that Mr. Stromberg's covering. The

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- (1) claim for attorneys fees goes to the more recent one.
(2) And then you wished me to articulate the
(3) issues?
(4) REFEREE POWERS: Well, I can just go down
(5) the - whichever is the easiest. I can go down the
(6) Notice of Hearing and we compare those down or ...
(7) MR. MITCHELL: The notice says it all.
(8) REFEREE POWERS: I'll just state for the
(9) record that the Notice of Hearing indicates the first
(10) two issues, which are combined, is whether or not
(11) Mr. Stoddard suffered personal injuries arising out of
(12) and in the course of an accident during his employment
(13) with the employer. The third issue we have listed is
(14) whether or not he is entitled to reasonable and
(15) necessary medical care and the extent thereof.
(16) And would that still be an issue regarding
(17) all accidents?
(18) MR. MITCHELL: Only as to the last one, the
(19) more rent.
(20) REFEREE POWERS: The next issue listed is
(21) whether or not Mr. Stoddard is entitled to TTD or TPD
(22) benefits. Again, will that involve more than one
(23) accident, if that's still an issue?
(24) MR. MITCHELL: Only the more recent one.
(25) REFEREE POWERS: The next listed issue is

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- (1) whether or not Mr. Stoddard is entitled to permanent
(2) partial impairment benefits. Would that involve all
(3) accidents?
(4) MR. MITCHELL: Correct.
(5) REFEREE POWERS: The next listed issue is
(6) whether or not Mr. Stoddard is entitled to permanent
(7) partial or permanent total disability in excess of any
(8) impairment. And, again, would that involve all
(9) accidents?
(10) MR. MITCHELL: Yes, your Honor.
(11) REFEREE POWERS: And another listed issue
(12) is whether or not an apportionment pursuant to 72406
(13) is appropriate. Would that again involve all
(14) accidents?
(15) MR. MITCHELL: Correct.
(16) REFEREE POWERS: The last listed issue is
(17) attorney fees. And as Mr. Mitchell pointed out
(18) earlier, that now only involves the last accident; is
(19) that correct?
(20) MR. MITCHELL: Correct.
(21) REFEREE POWERS: Okay. Are there any
(22) other issues that I didn't mention that we should
(23) discuss?
(24) MR. STROMBERG: No other issues that I'm
(25) aware of. But just as point of clarification, we

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- (1) don't dispute that there was an accident which caused
(2) an injury as a consequence of the 5/5/96 nor that
(3) there was an accident which caused an injury as a
(4) consequence of the 10/10/97. I don't know if that
(5) was made clear.
(6) REFEREE POWERS: Okay. Thank you for that.
(7) So the only question in that regard is ...
(8) MS. CHRISTENSEN: That's John's issue. We
(9) paid the benefits and accepted the claim. So I'm not
(10) sure why it's an issue.
(11) REFEREE POWERS: Okay. Counsel, does -
(12) MR. MITCHELL: Yeah, I was kind of surprised
(13) as - when you articulated that there was still an
(14) issue. So it sounds like that's not an issue for any
(15) of the three.
(16) REFEREE POWERS: Okay. And prior to going on
(17) the record, I was handed some groups of exhibits. I
(18) will start with the claimant's exhibits consisting of
(19) two bound notebooks numbered 1 through 25.
(20) And do you intend to offer those exhibits at
(21) this time, Mr. Mitchell?
(22) MR. MITCHELL: Yes, your Honor.
(23) REFEREE POWERS: Mr. Stromberg, do you have
(24) any objection to any of those exhibits?
(25) MR. STROMBERG: No, I don't.

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- (1) REFEREE POWERS: Thank you. Ms. Christensen?
(2) MS. CHRISTENSEN: No objections.
(3) REFEREE POWERS: Thank you. Claimant's 1
(4) through 25 are then admitted without objection.
(5) And Mr. Stromberg provided me with his
(6) exhibits which he has enumerated A through G. And I
(7) would ask you, Mr. Stromberg, do you intend to offer
(8) those at this time?
(9) MR. STROMBERG: I do in fact.
(10) REFEREE POWERS: Mr. Mitchell, do you have
(11) any objection to any of those exhibits?
(12) MR. MITCHELL: Yes, as to four of them. Do
(13) you want me to take those in order?
(14) REFEREE POWERS: Please.
(15) MR. MITCHELL: Okay. Exhibit B, which is the
(16) report of Dr. Birkeland, was an insurance medical
(17) evaluation done by Mr. Stoddard's own insurance company
(18) as part of his UIM claim regarding an accident that
(19) occurred July 24, 1997. And it's - I think it
(20) qualifies under rule - under the Commission Rule is it
(21) X(G) - VIII(G). But it's never - it was never
(22) rendered for any sort of treatment. I mean, it was
(23) a - an evaluation done by the insurance company in
(24) that case.
(25) And the problem that - I guess the objection

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- (1) I have is that we are denied the opportunity to
 (2) cross-examine that witness in this case. The flip side
 (3) of the issue was decided – a couple cases in Ada
 (4) County. And I'll just give you the order from one of
 (5) those cases and then also a brief that refers to the
 (6) other case.
 (7) The one case decided by Judge McKee, where he
 (8) refused to let a worker's comp report come in in a
 (9) third-party case. So it's totally opposite of what
 (10) we've got going on here. The other case is by Judge
 (11) Weston where he decided that not only does it not come
 (12) in, it's not even discoverable. You know, for largely
 (13) the same, you know, reasons.
 (14) If it is allowed in, I would ask that we be
 (15) allowed to make an offer of proof so that I can set
 (16) forth what in fact Dr. Birkeland said in his deposition
 (17) as far as how often he testifies on behalf of insurance
 (18) companies and things like that.
 (19) And I don't know that we – it seems to me
 (20) that this may be an issue we can take up later after
 (21) lunch after everybody has had chance to read it because
 (22) it's not going to affect my direct of Mr. Stoddard nor
 (23) of Mr. Brownell. And I imagine it wouldn't affect the
 (24) cross-examination either.
 (25) REFEREE POWERS: Okay.

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- (1) MR. MITCHELL: As to Exhibits D, F –
 (2) REFEREE POWERS: Well –
 (3) MR. MITCHELL: I'm sorry.
 (4) REFEREE POWERS: Excuse me, Counsel. Can
 (5) we just deal with B here and give Mr. Stromberg a
 (6) chance to respond to that. It's easier for me that
 (7) way.
 (8) MR. STROMBERG: I certainly agree with
 (9) Mr. Mitchell that the report does qualify for admission
 (10) under Rule VIII(G). The report is certainly relevant
 (11) to this proceeding. It deals with a July 24th, 1997,
 (12) automobile accident which came after the hernia injury
 (13) but before the low back injury. And that automobile
 (14) accident purportedly affected Mr. Stoddard's low back,
 (15) his upper extremities, and his ability to engage in
 (16) gainful activity.
 (17) As for discoverability, I obtained it from
 (18) Mr. Mitchell, I believe. Although, I don't want to
 (19) misstate that. He can correct me if I'm wrong.
 (20) As for the opportunity to depose the doctor,
 (21) there's no prohibition that I'm aware of Mr. Mitchell
 (22) deposing that doctor. In fact, he already has. It's
 (23) certainly relevant. As for Judge McKee's decision,
 (24) it's an entirely different form. That's a civil
 (25) proceeding. This is a worker's compensation

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- (1) proceedings. And the rules are different and much
 (2) more relaxed.
 (3) So I think it's relevant. I think it's
 (4) admissible per se under the Rule. And I don't see how
 (5) Mr. Mitchell has been prejudiced by its use in this
 (6) case.
 (7) REFEREE POWERS: Okay. Do you have any
 (8) comments, Ms. Christensen?
 (9) MS. CHRISTENSEN: No, I don't.
 (10) REFEREE POWERS: I think what I'll do is I'll
 (11) go ahead and reserve ruling on that. That will give me
 (12) a chance to look at the cases that Mr. Mitchell has
 (13) submitted.
 (14) Let me ask you this, Mr. Mitchell. If this
 (15) was a matter that I would request some briefing on
 (16) concomitant with your post hearing briefs, would that
 (17) have any impact on your – I don't know if there's any
 (18) post hearing depositions in this case – but would that
 (19) have any impact on the presentation of your case up to
 (20) that point?
 (21) MR. MITCHELL: No. I can – unless this
 (22) scenario were to happen, and maybe I should make my
 (23) offer of proof now as to what the deposition transcript
 (24) of Dr. Birkeland's examination in the third-party
 (25) case said regarding his, you know, propensity to

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- (1) testify on behalf of the defendants. That's all I
 (2) want to get in.
 (3) REFEREE POWERS: Is that deposition
 (4) transcript one of the exhibits?
 (5) MR. MITCHELL: No.
 (6) REFEREE POWERS: Okay.
 (7) MR. MITCHELL: And maybe that's the best way
 (8) of dealing with this issue. I mean, if – I agree it's
 (9) covered – the report's covered by Rule VIII. But I
 (10) don't have a chance to cross-examine. And I don't want
 (11) to go pay a thousand dollars to – of Mr. Stoddard's
 (12) money to go cross-examine somebody I've already
 (13) cross-examined before and ask him three questions.
 (14) REFEREE POWERS: Would the issues be
 (15) different that you would be cross-examining him on now
 (16) than they were when you did before?
 (17) MR. MITCHELL: No. I think the only thing
 (18) that's really relevant in the entire deposition is just
 (19) the, you know, the frequency that he testifies on
 (20) behalf of defendants.
 (21) So I can make an offer of proof or we can
 (22) just submit the deposition transcript. Whatever the
 (23) Commission ...
 (24) REFEREE POWERS: Well, as you're aware, the
 (25) Commission wants as much information as they can get.

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- (1) Probably – again, without ruling at this point on it,
 (2) it's probably going to be admissible. If it is, my
 (3) thought would be to go ahead and admit the deposition
 (4) transcript.
 (5) MR. STROMBERG: Would you want to admit the
 (6) whole transcript or just Mr. Mitchell's three
 (7) questions?
 (8) REFEREE POWERS: Well, I guess that would be
 (9) up to Mr. Mitchell.
 (10) MR. MITCHELL: It makes no difference to me.
 (11) If it would – we've got lots of paper here already. I
 (12) can just make my statements and leave it at that, or we
 (13) can get copies for everybody, whatever.
 (14) REFEREE POWERS: Well, if there's nothing in
 (15) the deposition transcript that you believe would
 (16) somehow clarify whatever might be in this report,
 (17) that's fine. You can just go ahead with your offer of
 (18) proof, if you want.
 (19) MR. MITCHELL: Dr. Birkeland was – you know
 (20) what. We've got a – I'm sorry. Why don't we just –
 (21) I guess I would offer the deposition transcript. We've
 (22) got a condensed version. It's not that many pages.
 (23) And I'd offer that.
 (24) REFEREE POWERS: Okay. Any objections to
 (25) that from either of you?

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- (1) MR. STROMBERG: I haven't seen the
 (2) transcript, so I'm somewhat hesitant. Can we have the
 (3) opportunity to look at the transcript over the break or
 (4) something?
 (5) REFEREE POWERS: Sure. Well, with that I'll
 (6) just go ahead and reserve ruling on Exhibit B until
 (7) we've got a chance to look at this stuff. Does that
 (8) take care of B, Counsel?
 (9) MR. MITCHELL: Yes, your Honor.
 (10) REFEREE POWERS: Okay. You had some other
 (11) objections?
 (12) MR. MITCHELL: Exhibits D, F and G I think
 (13) are all transcripts of Mr. Stoddard's various
 (14) depositions taken. I can't remember which one is
 (15) which. But one was taken in this case, one was taken
 (16) in the motor vehicle accident, and then one was taken
 (17) in the UIM portion of the motor vehicle accident.
 (18) And I certainly think that those transcripts
 (19) are allowable as impeachment evidence and can be used
 (20) to impeach Mr. Stoddard. There's no doubt about that.
 (21) But the transcript themselves should not come in as
 (22) evidence, even the transcript in this case. It's just
 (23) not proper.
 (24) REFEREE POWERS: I have F listed as a
 (25) deposition transcript of Dan Brownell, not yet

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- (1) prepared. Is that one that was mentioned in your
 (2) objection, Counsel?
 (3) MR. MITCHELL: I'm sorry. Let me make sure I
 (4) am correct in – so D is Mr. Stoddard's.
 (5) REFEREE POWERS: Right. And G.
 (6) MR. MITCHELL: And G. It's just those two.
 (7) REFEREE POWERS: So D and G?
 (8) MR. MITCHELL: I'm sorry. The same would
 (9) apply for F, but pertaining to Mr. Brownell.
 (10) REFEREE POWERS: He's going to testify?
 (11) MR. MITCHELL: Correct.
 (12) REFEREE POWERS: Mr. Stromberg.
 (13) MR. STROMBERG: You know, I have done several
 (14) of these hearings, and the referees handle deposition
 (15) transcripts and discovery in different ways. Some
 (16) referees just say give me the whole transcript, and
 (17) I'll look at it and I'll read what I think is relevant
 (18) and make my own determinations. Other referees apply
 (19) the civil rules strictly and allow it to be used only
 (20) for impeachment.
 (21) I don't know what your particular approach is
 (22) going to be. I would submit that it's going to
 (23) expedite the proceedings if the transcripts themselves
 (24) are simply admitted and you can review those at your
 (25) leisure rather than me having to go over all of the

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- (1) points raised in the various deposition transcripts.
 (2) But, you know, it's your call whether you're
 (3) going to apply the civil rules strictly or the more
 (4) relaxed rules of the Industrial Commission.
 (5) REFEREE POWERS: Ms. Christensen, do you have
 (6) any comments?
 (7) MS. CHRISTENSEN: My preference would be for
 (8) the admission for kind of the same reasons that
 (9) Mr. Stromberg has given. There are two depositions.
 (10) They are fairly thick. And I know when I read through
 (11) them – this hearing can go on forever if we go through
 (12) the depositions and use them for impeachment. So
 (13) certainly for judicial efficiency, it would make more
 (14) sense if we were to have them admitted.
 (15) REFEREE POWERS: What I usually do is I admit
 (16) them. But I don't read them unless there's some reason
 (17) to. If somebody points something out in a deposition
 (18) transcript that comes up at the hearing, in other
 (19) words, I don't really like people briefing stuff that's
 (20) in depositions without giving the other party some
 (21) chance at the hearing to clarify or whatever.
 (22) So I'm going to go ahead and admit them for
 (23) that purpose. In other words, if you want to speed
 (24) things along and say, well, in your deposition taken on
 (25) such and such a date, did you discuss truthfully your

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- (1) employment history on pages 1 through 18 or that – you
(2) know, that kind of thing.
(3) Frankly, I don't read them unless there's a
(4) reason to, unless somebody points out something, an
(5) inconsistency. But usually that's done at a hearing
(6) when the claimant is testifying. And so I guess with
(7) those comments, if they're understood, I'll go ahead
(8) and admit them and certainly take into account
(9) Mr. Mitchell's comments regarding admission. But
(10) that's how I do it.
(11) MR. STROMBERG: As a point of clarification,
(12) does that cover the transcript of the Dan Brownell
(13) deposition? That was noted as a vocational deposition.
(14) It was actually taken before hearing. And the
(15) deposition notice included the language saying that
(16) this was going to be used for testimonial purposes.
(17) Would your same ruling apply to his
(18) deposition transcript?
(19) REFEREE POWERS: And the transcript has not
(20) yet been prepared?
(21) MR. STROMBERG: It's actually sitting on your
(22) table.
(23) REFEREE POWERS: Oh, okay. So long as if
(24) somebody wants to use it for impeachment and that sort
(25) of thing, it's available to be done today. And

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- (1) apparently Mr. Brownell is going to testify, so that
(2) could be accomplished. So, yes, it would be admitted
(3) on the same – for the same reasons.
(4) MR. STROMBERG: Thank you.
(5) REFEREE POWERS: Anything else, Mr. Mitchell,
(6) regarding the defense exhibits?
(7) MR. MITCHELL: One last objection and that's
(8) to Exhibit E, the arbitration decision in the UIM case.
(9) And our objection is basically hearsay, number one,
(10) and, number two, that it's – as to its relevance.
(11) REFEREE POWERS: Mr. Stromberg.
(12) MR. STROMBERG: The arbitration award arose
(13) out of that July 24th, 1997, automobile accident. And
(14) certainly one issue – or the series of issues that
(15) this case deals with how much Mr. Stoddard was injured
(16) by that July 1997 accident and how it impacted his
(17) ability to engage in wagering activities.
(18) The arbitration award indicates that
(19) Mr. Stoddard sustained \$65,000 in damages as a
(20) consequence of that automobile accident. And so it's
(21) relevant as some measure of proof as to the
(22) significance of the automobile accident. And as I
(23) indicated, the automobile accident has great
(24) significance in this case.
(25) REFEREE POWERS: Ms. Christensen.

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- (1) MS. CHRISTENSEN: Nothing further to add to
(2) that.
(3) REFEREE POWERS: Do you have any response to
(4) that, Mr. Mitchell?
(5) MR. MITCHELL: Well, the arbitration award
(6) doesn't break out anything as far as pain and suffering
(7) or anything between generals and specials, medicals,
(8) lost earnings. We're totally in the dark. It's
(9) hearsay. If we want to bring in the three arbitrators
(10) and have them explain what the basis of their award
(11) was, that's fine. But it's seriously lacking in any
(12) foundation. I don't think it's relevant. And it is
(13) hearsay. They're not doctors.
(14) REFEREE POWERS: And you're offering it for
(15) what purpose, Mr. Stromberg?
(16) MR. STROMBERG: Its relevancy is to add some
(17) quantification or some elucidation on the degree of
(18) damages Mr. Stoddard sustained as a consequence of the
(19) July 1997 automobile accident.
(20) REFEREE POWERS: With the understanding, I
(21) assume, that the arbitration took place in an entirely
(22) different forum than this.
(23) MR. STROMBERG: Of course. And I assume that
(24) you'll provide whatever weight to it that you think is
(25) appropriate.

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- (1) REFEREE POWERS: Okay. I'll go ahead and
(2) admit Defense Exhibit E for the limited purposes
(3) described by Mr. Stromberg. Anything else regarding
(4) exhibits?
(5) MR. STROMBERG: Not from me.
(6) MR. MITCHELL: Nothing further. I'm sorry,
(7) Judge.
(8) REFEREE POWERS: Thank you, Counsel.
(9) Mr. Mitchell, then you can either make an opening
(10) statement or waive that and call your first witness as
(11) you choose.
(12) MR. MITCHELL: Just a brief opening
(13) statement. Because there are so many injuries, I think
(14) it may help just to give you a little bit of a road
(15) map.
(16) The sequence of injuries are the May 5th,
(17) 1996, hernia accident at work, followed by a February
(18) 1997 hernia operation. Okay. So it was almost a year
(19) before it was surgically operated on. That made
(20) Mr. Stoddard's hernia symptoms and the pain and the
(21) numbness significantly worse.
(22) July 24, 1997, he has a motor vehicle
(23) accident where he's rear-ended. He has shoulder,
(24) neck and some right-sided low back pain. The medical
(25) record shows that that low back pain resolved to an

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(1) extent.
 (2) In October 1997, he has a low back injury at
 (3) work where he was lifting a very heavy, flat concrete
 (4) flower pot. That caused central low back pain. And
 (5) then in November of 1997, he has his second hernia
 (6) surgery. Dr. West, who was treating him for the motor
 (7) vehicle accident, tried to make his hernia symptoms
 (8) better and improved a cramp-like effect in his groin.
 (9) But other than that, the pain in the left testicle,
 (10) pain in the pubic area, pain in the groin and the
 (11) numbness wasn't helped at all.
 (12) He continued to work in 1998. Started to
 (13) work in 1999. Had a slip and fall injury at work that
 (14) caused an increase in his symptoms in both his back and
 (15) the groin. And Dr. Shanks's report show - his
 (16) reports, records, Exhibit 1 shows that this was -
 (17) while it increased the prior symptoms he had, it was a
 (18) different sort of injury. It was a joint injury. The
 (19) slip and fall and landing square on his rear end
 (20) created a joint type injury that exacerbated his
 (21) preexisting degenerative condition in his spine. And
 (22) that's - and he's just not recovered from that.
 (23) We've got a man here who had two hernia
 (24) surgeries during the off-season so that he wouldn't
 (25) miss work. The first hernia surgery was done at the

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(1) request of Mr. Hagadone's supervisor, Mr. Barlow, with
 (2) that express purpose so that he would be ready by the
 (3) time his summer home was ready to be opened up. The
 (4) next hernia surgery was done during the off-season,
 (5) again, so he wouldn't miss work.
 (6) During 1996, after he had the first hernia,
 (7) he not only did his work at Mr. Hagadone's summer home,
 (8) but he also did a job for Idaho Forest Industries doing
 (9) shrubbery work, tree pruning, topiary work in the
 (10) evenings and on the weekends. He was able to do that
 (11) even with the hernia. I believe that it's important to
 (12) keep in mind here that it was the first hernia surgery
 (13) that really put that injury into a downward spiral.
 (14) And the second hernia surgery really didn't do anything
 (15) to correct it.
 (16) Since the May injury, the May 1999 injury, he
 (17) tried physical therapy at the direction of Dr. Shanks.
 (18) That helped somewhat. That therapy was cut off by the
 (19) surety once Dr. Adams's report was obtained that said
 (20) he didn't need any more therapy, didn't need any more
 (21) medical treatment. And as soon as the therapy was
 (22) discontinued, his symptoms worsened.
 (23) In April of 2000 - I'm sorry. Let me back
 (24) up. The therapy was discontinued toward the end of
 (25) 1999, the first part of 2000. In April of 2000, it

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(1) became clear that Mr. Hagadone was not going to hire
 (2) Mr. Stoddard back in any capacity, even for sedentary
 (3) work. Dan Brownell will testify to that. And then
 (4) Mr. Stoddard began a course of job search. He
 (5) contacted over 80 employers and hasn't found anything.
 (6) Dan Brownell, being an employee of the
 (7) Industrial Commission Rehab Division, is neutral. And
 (8) he will tell you that he doesn't think Mr. Stoddard's
 (9) employable. Mr. Brownell asked the sureties involved
 (10) here for their help in paying for a functional
 (11) capacities evaluation. They weren't willing to do it.
 (12) That's fine. We paid for that.
 (13) That functional capacities evaluation done a
 (14) month ago says that Mr. Stoddard can do light,
 (15) sedentary work but only for about four hours a day
 (16) because of his injuries and the deconditioning that's
 (17) gone on since May of 1999.
 (18) The only people that have testified
 (19) differently are the people who have been paid to
 (20) render an opinion to the contrary. That's where we're
 (21) going.
 (22) REFEREE POWERS: Okay. Thank you for that,
 (23) Counsel. Mr. Stromberg, opening statement or do you
 (24) want to reserve?
 (25) MR. STROMBERG: I'll make a brief one,

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(1) Mr. Referee. As indicated earlier, General Insurance
 (2) Company was Hagadone's surety for the 5/5/96 hernia
 (3) injury and the 10/10/97 low back injury.
 (4) With respect to the 5/5/96 hernia injury,
 (5) it's undisputed that we paid all medical benefits that
 (6) are due, all temporary disability benefits that are
 (7) due. A 10-percent impairment rating was assigned, and
 (8) we promptly paid that. It's also undisputed that
 (9) Mr. Stoddard missed no work as a consequence of the
 (10) hernia injury in '96, '97 or '98.
 (11) With respect to the 10/10/97 low back injury,
 (12) that occurred toward the end of the season.
 (13) Mr. Stoddard was able to finish what remained of the
 (14) season and had some physical therapy during the
 (15) off-season. After he had that physical therapy, he was
 (16) able to return to work for the entire 1998 season,
 (17) despite the low back injury, despite the hernia injury.
 (18) And, in fact, his treating physician on the 10/10/97
 (19) low back injury assigned a zero percent of the whole
 (20) person permanent partial impairment rating and imposed
 (21) no restrictions.
 (22) So from our perspective, we have Mr. Stoddard
 (23) missing no work. We have a 10 percent impairment on
 (24) the hernia, which we paid. We have a zero percent
 (25) impairment on the low back and no restrictions.

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- (1) With respect to the medical opinions, I
 (2) believe we have three physicians who have been unable
 (3) to find any objective reason for Mr. Stoddard's
 (4) continued pain complaints. There certainly is
 (5) Dr. Shanks on his side of the ledger who says, yeah, I
 (6) think he does have some objective support for his pain
 (7) complaints. But we do have a very significant conflict
 (8) in the medical opinion, which the referee will need to
 (9) resolve.
- (10) But I guess to sum it up from our
 (11) perspective, we feel that for our injuries we paid
 (12) what's due.
- (13) REFEREE POWERS: Thank you, Counsel.
- (14) Ms. Christensen, do you want to make an opening
 (15) statement or reserve?
- (16) MS. CHRISTENSEN: Reserve.
- (17) REFEREE POWERS: Thank you. Okay, Counsel.
- (18) I appreciate that. That will help me get a little
 (19) better grip on this as the testimony comes in here.
- (20) Would you like to take short break,
 (21) Mr. Stoddard, before we begin, or are you ready to take
 (22) the hot seat?
- (23) MR. STODDARD: I think I'll take the seat.
- (24) REFEREE POWERS: Okay. We'll take a break
 (25) here in about 45 minutes to give you a chance to move

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- (1) around, if you need to. By the way, if you need to
 (2) stand up during your testimony, feel free to do so.
- (3) THE WITNESS: Thank you.
- (4) REFEREE POWERS: And if you'll face the court
 (5) reporter, she'll swear you in.
- (6) ROBERT J. STODDARD,
 (7) having been first duly sworn to tell the truth, the
 (8) whole truth, and nothing but the truth, relating to
 (9) said cause, testifies and says:
- (10) DIRECT EXAMINATION
- (11) QUESTIONS BY MR. MITCHELL:
- (12) Q. Mr. Stoddard, could you please state your
 (13) full name for Referee Powers and the Commission.
- (14) A. Robert J. Stoddard.
- (15) Q. Where do you live?
- (16) A. At 880 East Pearl Avenue in Hayden, Idaho.
- (17) Q. How long have you lived in the Coeur d'Alene
 (18) area?
- (19) A. Most of my life, practically all, except for
 (20) military time and a little short period of time over in
 (21) Spokane, Washington.
- (22) Q. Okay. I know it's not natural in this room,
 (23) but I can barely hear you.
- (24) A. Oh.
- (25) Q. Try and direct your voice loudly and towards

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- (1) the referee and towards counsel, too, so they can hear
 (2) you.
- (3) A. Okay.
- (4) Q. You're divorced?
- (5) A. Yes.
- (6) Q. How many children do you have?
- (7) A. Three.
- (8) Q. What are their names and where do they live?
- (9) A. Angela lives in Wenatchee, Washington. And
 (10) Bradley lives in Coeur d'Alene, Idaho. And Tracy lives
 (11) in Livermore, California.
- (12) Q. How many grandchildren do you have?
- (13) A. Eight grandchildren.
- (14) Q. How many of the grandchildren live here in
 (15) the Coeur d'Alene area?
- (16) A. Three, three grandsons.
- (17) Q. And are you left- or right-handed?
- (18) A. I'm left-handed.
- (19) Q. Just briefly describe the three - I believe
 (20) it's three marriages you've had?
- (21) A. Yes.
- (22) Q. And the approximate years and from which
 (23) marriage the children were born.
- (24) A. My first marriage was to Kay, and I was
 (25) married to her for 15 years. My second marriage was to

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- (1) Cathy, and I was married to her for 11 years. And my
 (2) third marriage was to Helen, and I was married to her
 (3) for 11 years.
- (4) Q. Your marriage to Helen ended in 1996?
- (5) A. Correct.
- (6) Q. Exhibit I think it's 25. Your tax returns
 (7) for 1996, do you generally recall those?
- (8) A. I do. I believe I do, yes.
- (9) Q. I'm going to lead, counsel, until someone
 (10) objects just to kind of speed this along.
- (11) In 1996 you were divorced?
- (12) A. Correct.
- (13) Q. Was your income split basically in half for
 (14) tax purposes?
- (15) A. It had to be, yes.
- (16) Q. In 1996?
- (17) A. Yes.
- (18) Q. Okay. In 1996 you were working both for
 (19) Mr. Hagadone and for Idaho Forest Industries?
- (20) A. I was contracting for Idaho Forest
 (21) Industries. I wasn't an employee of theirs.
- (22) Q. And we'll get to that in a little bit.
- (23) What's the extent of your education?
- (24) A. I completed ten years of school in Coeur
 (25) d'Alene and approximately three years of school at

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- (1) **Spokane Falls College.**
 (2) Q. Ten years of school, you mean you completed
 (3) your sophomore year?
 (4) A. Correct.
 (5) Q. Did you ever graduate from high school?
 (6) A. No.
 (7) Q. Did you ever get a GED?
 (8) A. No.
 (9) Q. And why did you stop high school?
 (10) A. For financial reasons. I couldn't afford to
 (11) continue going to high school at that time.
 (12) Q. And that's just basically family financial
 (13) reasons?
 (14) A. Correct.
 (15) Q. You mentioned some schooling later on. Where
 (16) was that?
 (17) A. At Spokane Falls College.
 (18) Q. And what did you take?
 (19) A. For two years I went to an insurance school
 (20) over there, a business insurance school. And also
 (21) for – not full-time all the time, but for about two
 (22) and a half to three years, I was in business school at
 (23) Spokane Falls College.
 (24) Q. And did you get a degree from them?
 (25) A. No.

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- (1) Q. Any other schooling that you have been to?
 (2) A. I went to aircraft mechanic school in the Air
 (3) Force. And I believe that's it.
 (4) Q. You –
 (5) A. Excuse me. I went to a – for La Quinta
 (6) Hotels, I went to a management school for about three
 (7) months.
 (8) Q. Any certificate from that?
 (9) A. No. No. My wife got injured, and so we
 (10) were – one week before completion, we were
 (11) discharged.
 (12) Q. Can you describe for Referee Powers your work
 (13) experience.
 (14) A. Well, when I left high school, I worked for
 (15) Mr. Hagadone's father for three years. And then I went
 (16) into the Air Force for four years. And then I worked
 (17) for Metropolitan Insurance Company for approximately
 (18) one year. And then I went to work for the Prudential
 (19) Insurance Company for about four to five years. I
 (20) can't remember for sure. And then I transferred with
 (21) them down to Yakima, Washington. And I was supposed
 (22) to
 (23) take a position with Prudential in Yakima. Instead I
 (24) started a beer company, and moved to Pocatello, Idaho,
 (25) and ran the beer company for about one year.
 (26) And then I disposed of that and moved back up
 (27) to Idaho, up to northern Idaho. And at that time I

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- (1) went to work for Joy August Distributing in Spokane.
 (2) And that wasn't a full-time job. That was a part-time
 (3) job. And from then I worked – went to work in 1975
 (4) for Medical Service Corporation of Spokane. And I
 (5) worked there for four years.
 (6) And then I moved back over here in 1981 and
 (7) started a meat company and worked the meat company
 (8) for
 (9) about four years. And then the sawmills around here
 (10) went down, so I couldn't sell my product anymore.
 (11) There was a – kind of a dumping of a lot of product
 (12) from south eastern Idaho up in this area. So it just
 (13) really changed the ability for me to sell meat in this
 (14) area.
 (15) Then I left the area and went down to
 (16) California for approximately one year and moved back
 (17) up
 (18) to this area. That's when we took the job in 1997, the
 (19) job offer and the training offer in 1987, excuse me,
 (20) and went to San Antonio, Texas, with La Quinta Hotels.
 (21) And just as we were about to complete our
 (22) training and take over a hotel for them, then my wife
 (23) got injured. And she was not able to complete her
 (24) training, and she had to have surgery.
 (25) We moved back up here to the Coeur d'Alene
 (26) area and – for her – waiting for her to recover. And
 (27) I spent quite a bit of time running back and forth to

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- (1) Spokane, taking her to hospitals – or I mean to
 (2) doctors over there because she was having some
 (3) problems
 (4) with her colon and not being able to get things squared
 (5) away on her own physical being. And that lasted for a
 (6) couple of years.
 (7) In the meantime, I worked at Post Falls for
 (8) the 7-Eleven store. A friend of mine owned that at
 (9) Post Falls. And then I went to work for the Hayden
 (10) Lake Country Club. I worked there for about three
 (11) years. And then I went to work for the country club in
 (12) Caesarea, Isreal, as a greenskeeper. And financially
 (13) that wasn't – wasn't a good move for me. And so I
 (14) moved back to this area in 1993.
 (15) In the fall of 1993, in August I believe it
 (16) was, I started working for Mr. Hagadone. And at that
 (17) time, that was seasonal. And I believe that same
 (18) winter Brian Stevens and I, across from us here, was –
 (19) and I had cleared a path to put a fence in, an electric
 (20) fence around the property. And then we – and then I
 (21) worked for him until the accident on May of 1999.
 (22) And that was seven months out of the year
 (23) with it – that was employment with The Hagadone
 (24) Corporation. And that brings me up to this time.
 (25) Q. Do you remember working for Service Master by
 (26) Sunshine?

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- (1) A. That was about the same time I left the
 (2) 7-Eleven store at Post Falls.
 (3) Q. What did you do for them?
 (4) A. I cleaned the – what was at that time the
 (5) First Federal – actually, First Federal Savings and
 (6) Loan building for about one year. And after that is
 (7) when I went to work at the country club.
 (8) Q. Okay. I may have missed it. But you worked
 (9) for Prudential Insurance on two different occasions?
 (10) A. Yes, in 1981 when I moved back over to this
 (11) area, I went to work for them again. And I worked for
 (12) them for about, oh, six months to a year. I don't
 (13) remember which – which one it was. There was a gas
 (14) problem and crisis going on about that time. And so
 (15) there was some hanky-panky going on in the office. So
 (16) I mentioned it to my boss, and he said I got to go
 (17) along with my sales managers. And I said, well, I'll
 (18) see you later. So I left.
 (19) People were signing amendments to policies
 (20) and not having the people sign them but there was
 (21) some
 (22) other people in the office signing them. So I didn't
 (23) want any part of it.
 (24) Q. You mentioned that when you started working
 (25) for Mr. Hagadone in the fall of 1993 that there was
 (26) some specific work for you to do?

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- (1) A. Yes. It was – the man that was there at the
 (2) time was going to help me get used to it and kind of
 (3) train in the area before he left employment in October.
 (4) And, as it turned out, he left, and I – I could barely
 (5) get ahold of him from that time on. So I just kind of
 (6) tried to figure out things for myself.
 (7) Q. Were you hired to be the groundskeeper
 (8) there?
 (9) A. Well, they called it a caretaker. And it
 (10) included groundskeeping too, yes.
 (11) Q. So when you started in the fall of 1993, that
 (12) was your –
 (13) A. That was the job, yes.
 (14) Q. Okay. You weren't specifically hired to do
 (15) the fence or whatever it was you described?
 (16) A. No, that wasn't – that wasn't even there at
 (17) the time.
 (18) Q. How did you come to get the job with
 (19) Mr. Hagadone?
 (20) A. I saw an ad in the newspaper, and I answered
 (21) the ad. And they called me in for an interview. And I
 (22) interviewed with Mr. Hagadone.
 (23) Q. During the interview, what did you talk
 (24) about?
 (25) A. We talked about the job itself at the – at

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- (1) the lake cabin and what he – what was going on over
 (2) there and what he expected. And we also brought up the
 (3) fact that – he brought up the fact that it only paid
 (4) about \$10 an hour. And that wasn't a lot of money for
 (5) seven months. And I said, well, at that time, I said,
 (6) I do have a sideline which I do, and that's ornamental
 (7) shrubbery and trimming work and regular shrubbery and
 (8) trimming work. And so I said that provides me
 (9) additional income, so I believe it would work out quite
 (10) well for me.
 (11) Q. So Mr. Hagadone back in 1993 knew about your
 (12) outside work?
 (13) A. Correct.
 (14) Q. When you started there at the summer home
 (15) with Mr. Hagadone, what were your responsibilities?
 (16) A. They were to gather down at the yacht club
 (17) here in Coeur d'Alene. And there was a boat, about a
 (18) 20- or 21-foot boat there. And my responsibilities
 (19) were to take any people who needed to go across the
 (20) lake for maintenance, to haul them across the lake with
 (21) me, and to make sure that they got back, and to do it
 (22) all, of course, in a safe manner, to – to do the work
 (23) that was necessary on the property while I was there,
 (24) and to take care of things as needed to be taken care
 (25) of.

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- (1) Q. What did you wind up doing? I mean, can you
 (2) describe some – maybe describe the summer home for
 (3) Referee Powers and –
 (4) A. Well, it's a large – it's a large summer
 (5) home. I would guess there's somewhere around, at this
 (6) time, about three acres under cultivation over there
 (7) now. And most of the time that I was there, I mowed
 (8) the lawn about four times a week. He liked it nice and
 (9) fresh daily. I would do edging around all the flower
 (10) beds and the walkways.
 (11) I would make sure the – some areas that
 (12) didn't have enough water, because the water system
 (13) wasn't quite working to cover them, I would make sure
 (14) that they were wet down. I took care of and cleaned
 (15) the beach daily and made sure the sand was fluffed up
 (16) on the beach. And I also cleaned the garage and the
 (17) boats that were out in the garage. They would get bird
 (18) manure on them daily. And as I could, I would go out
 (19) there and do that.
 (20) I would water the plants that were out on the
 (21) dock by hand. That had to be taken care of. And I
 (22) would make sure the water system was working
 (23) properly.
 (24) He had a system where he drew the water out of the lake
 (25) and pumped it up to a reservoir. And there was a
 (26) chlorine attachment to the water, and so I'd add – had

